

### **REMARKS**

In response to the non-final Official Action of August 3, 2010, independent claim 1 has been amended in a manner which is believed to particularly point out and distinctly claim the invention in view of the cited art. Support for the amendment is found in the original application as filed, including Figure 2 and paragraphs [0039] and [0041] of the published US application. No new matter is added.

### **Drawings**

At section 2, the drawings are objected to under 37 CFR 1.83(a). Specifically, with respect to claims 11, 13, and 14, mention is made of the word "insert" which the Office states is not shown in the drawings. In fact, Figure 3 and the accompanying description thereof at paragraph [0040] of the published application discloses a slug 124 which is positioned within the glass reservoir 103. This slug is stated as considerably reducing the cross-section of the reservoir as compared to when the slug is not present. Consequently, claims 11, 13, and 14 have been amended to replace the word "insert" with the word "slug". As amended, the drawings do show every feature of the invention as claimed.

### **Claim Rejections - 35 USC §103**

At section 4, claims 1, 3, 6, 9, 11, 13, 14, and 17 are rejected under 35 USC §103(a) as being unpatentable in view of US patent 5,013,800, Brunet, in view of US patent application publication 2005/0211241, Anderson, et al (hereinafter Anderson).

With respect to claim 1, the Office asserts that Brunet shows a dispenser for a gaseous, gas borne, or droplet substance comprising the elements recited in claim 1, except that Brunet fails to disclose that the reservoir is translucent or transparent and is further silent with respect to the material of the container.

Anderson is cited as showing a dispenser for a medicament comprising a reservoir, a housing, and a release mechanism wherein the reservoir comprises a major portion and a minor portion at the opposite end of the source from the release

mechanism in the form of a tapered tip having a comparatively small cross-section of its substance space and further discloses that the reservoir is formed from transparent materials. The Office further asserts that it would be obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the reservoir of Brunet out of a transparent or translucent plastic or glass and a window in the housing as taught by Anderson to allow the user to view the level of fluid in the container. For the reasons presented below, applicant respectfully submits that claim 1 as amended is not suggested by Brunet in view of Anderson.

### **Nature of the Present Invention as Claimed**

Dispensers according to the present invention are particularly advantageous, because of the use of a source therein having a translucent or transparent reservoir which has a major portion and a minor portion, the minor portion being in the form of a tapered tip and positioned at the opposite end to the release valve of the dispenser. When the dispenser is inverted from its use position (i.e., so that the valve is up), these features allow easy estimation of the number of doses remaining in the reservoir as the substance is close to exhaustion and therefore allows users to know when they are likely to need a new dispenser, when to carry a replacement, and when to fill their prescription, etc. The tapered tip in particular allows the user to invert the dispenser and determine the level of medicament remaining when it is close to exhaustion. This is clearly shown in Figure 2 of the present application (in an inverted position) as compared to the dispensed position as shown in Figures 1, 3, and 4.

Additionally, as use of the dispenser and associated medicament continues, the tapered tip causes the level of medicament to decrease progressively faster giving the user an indication of when a fresh dispenser will be shortly required.

### **Argument**

Brunet discloses tamper-proof packaging for small spray devices 1, the packaging comprising a case 13 and a pusher 5 and the device comprising a can 2

(i.e., a reservoir), and a valve 3 (Brunet, column 2, lines 35-37). This packaging is shown in Figures 1 and 2 of Brunet. Figure 2 also shows that case 13 is made in the shape of a cylindrical housing. The housing has a pre-cut bottom 17 as shown in Figures 5 and 6, as well as disclosed at column 3, lines 13-15. In use, bottom 17 of the packaging is removed to reveal an opening which is too narrow to allow the spray device to pass through it, but wide enough to allow a user's thumb to be inserted and thereby gain access to the spray device which can be seen in Figures 2-7 of Brunet and as described at column 3, lines 44-56.

In the Office Action, the Office has annotated Figure 2 of Brunet to indicate that the Office considers can 2 (i.e., the reservoir) to have both a major portion A and a minor portion B in the form of a tapered tip at the opposite end of the source from the release valve. However, Brunet is missing three key features of amended claim 1. In particular, there is no teaching in Brunet of:

- i) a reservoir made of transparent or translucent material;
- ii) a dispenser that has to be inverted to observe the level of medicament in the tip; and
- iii) the tapered tip allows a user to easily determine the level of medicament present in the dispenser.

Indeed, Brunet lacks any teaching at all of being able to observe the medicament level present in the disclosed device or how to determine when the can is spent (exhausted).

Figures 1 and 2 of Brunet show can 2 as having an internal structure with a tip that presumably contains medicament. There is, however, no description in Brunet of how this internal structure is made and there is no suggestion that it, or its contents, can be seen from the outside of the can.

Furthermore, at column 3, lines 34-36 of Brunet it is stated that the spray device is non-reversibly held within the tamperproof packaging and Figure 2 demonstrates that the packaging of Brunet fully encloses can 2. It is therefore evident that a user has to dismantle the packaging in order to get to the can. Even if this is done, however, if the

can is made of aluminum (as is conventionally done in the medicament dispenser art), it would still not be possible to observe the level of substance remaining within the internal structure of the can as discussed above.

Significantly, the applicant also submits that a person of ordinary skill in the art at the time of the invention would not make the modifications necessary to arrive at a dispenser as claimed as a result of reading Anderson. In particular, Anderson discloses a medicament fluid dispenser comprising a housing 9 and a pump-action fluid discharge device 8 actuated by a pair of opposing levers 20, 21 (see Figure 4, for example). The device 8 comprises a translucent or transparent container 30 with a conical, frusto-conical or spherically shaped base portion 35 or with two inclined surfaces arranged for cooperation with the levers (Anderson, paragraphs [0011] and [0012]). The housing 9 also has at least one window 28 through which the level of the fluid in the container can be viewed. This is shown in Figures 2 and 4 of Anderson, as well as described at paragraph [0057].

Anderson does not, however, disclose a dispenser which the user inverts to observe the level of substance in the minor portion. Rather, like Brunet, the dispenser of Anderson is designed to be used with the reservoir in the opposite configuration to the configuration of the dispenser as claimed in amended claim 1.

More specifically, Anderson does not teach or suggest that the dispenser should be inverted so that the valve is up in order to observe the level of substance in the minor portion of the reservoir. Rather, during use of the container of Anderson, the release valve is in the up position and the medicament remains in the tapered end. This is clearly shown in Figure 4 of Anderson.

Moreover, Anderson teaches that it is a window in the housing 9 that enables the level of medicament remaining in the container to be determined (Anderson, paragraph [0078]), not being able to observe the level in the tip. Indeed, Figure 4 of Anderson suggests that the window 28 does not in fact extend down to the bottom of the tip.

In other words, there is absolutely no teaching in Anderson that the tapering tip enables the level of medicament to be observed. To the contrary, Anderson teaches at

paragraph [0099] that the tapering from of the base portion 35 of the reservoir is advantageous, because it allows more fluid to be collected than if a flat bottom container is used. This stated purpose in Anderson would therefore lead a person of ordinary skill in the art directly away from the dispenser of the present invention wherein during use, the medicament flows away from the tapered end of the source toward the valve end. In other words, the teaching in Anderson is the complete opposite to that in the dispenser as claimed in amended claim 1. If the teaching in Anderson to have a tapered tip at the end where medicament is collected from was incorporated into the dispenser claimed, the minor portion would be at the valve end completely opposite to that claimed in the present invention.

In summary, it is therefore respectfully submitted that neither Brunet nor Anderson taken alone or together suggest a dispenser having a source comprising a reservoir having a minor portion in the form of a tapered tip that enables the level of medicament to be easily determined when the dispenser is inverted so that its valve is up. Accordingly, it is respectfully submitted that claim 1, as amended, is distinguished over Brunet in view of Anderson.

It is also respectfully submitted that a person of ordinary skill in the art reading Brunet would not combine its teachings with those of Anderson, because of the fundamental differences between the dispensers of each of these references.<sup>1</sup>

Dependent claims 3, 6, 9, 11, 13, 14, and 17 are also believed to be distinguished over Brunet in view of Anderson at least in view of their ultimate dependencies from amended claim 1.

Similarly, the rejection of dependent claims 7 and 8 at section 5 of the Action and dependent claim 10 at section 6 of the Action in view of Brunet, Anderson, and

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<sup>1</sup> In this regard, it is noted that Brunet discloses a spray device comprising a can 2 and a valve 3 which is actuated by pushing a hollow rod 4 into the valve to release medicament (Brunet, column 1, lines 48-49). In contrast, Anderson discloses a pump action fluid dispensing device comprising a container 30 and a compression pump 29 with a plunger and a piston. The plunger is attached to a fluid delivery tube 31 which defines a chamber that is sized to accommodate a single dose of fluid in which the piston is supported (Anderson, paragraphs [0094] and [0095]).

Anderson at paragraph [0108] describes how a full stroke of the plunger in the chamber produces a change in volume equal to a single dose of fluid. This movement then causes fluid to be expelled from the cylinder into delivery tube 31. This type of dispenser is therefore entirely different to that disclosed in Brunet.

additional art, is also respectfully refuted at least in view of the ultimate dependency of these dependent claims from amended claim 1.

It is therefore respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

The undersigned respectfully submits that no fee is due for filing this Amendment. The Commissioner is hereby authorized to charge to deposit account 23-0442 any fee deficiency required to submit this paper.

Respectfully submitted,

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